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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 119

O'NEAL MASSEY,

Petitioner,

vs.

H. E. MOORE, Warden, Texas State Penitentiary at Huntsville, Texas

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REPLY BRIEF FOR PETITIONER

Argument

The briefs filed in the instant case, as respondent has correctly stated, have narrowed the disagreement between the parties down to one simple question. It is this: has the issue of "insanity" which was presented to the District Court below been resolved in any previous proceeding? It is petitioner's position that it has not been so resolved, and respondent contends that it has.

Since the point of dispute is a simple question of fact which can quickly be determined from the record here, it may seem remarkable that it should be in serious dispute. The difficulty appears to stem from the use of the term "insanity". The word suggests that if such a question has been litigated, the petitioner has either been found sane, or he has been found insane, and there is an end of the

matter. But if the phrase "mental capacity" is substituted, the confusion begins to clear. The new phrase immediately raises the question: mental capacity *to do what?* It is perfectly true that the question of petitioner's mental capacity for *some* purpose appears to have been resolved against him in another proceeding, but however that may be, the question of his mental capacity *to conduct his own defense* at his 1941 trial has never been resolved.

Respondent's argument that the present issue of mental capacity has been previously resolved is based solely upon the 1948 proceeding in the Federal District Court and, more specifically, upon that court's conclusion of law that

> "the evidence does not satisfactorily show that at the time of the trial, [petitioner] was of unsound mind." (R. 18)

It must be kept firmly in mind, however, that the court in its 1948 decision laid great emphasis upon its erroneous assumption that petitioner *was* represented by counsel at the trial. What, then, was the issue of mental capacity which was before the District Court in 1948? In the court's view, apparently, it was this: was petitioner so incapacitated that, despite the assumed fact that he did not *personally* have to cope with the legal problems of the defense, the trial violated the Federal Constitution? Thus the court said in its final words on the subject,

> "*he was represented by counsel*, and I do not think that the evidence is sufficient to permit or require me to strike down the judgment and sentence on the ground that he was of unsound mind at the time of the trial." (R. 18) (emphasis supplied)

Assuming as the court did in 1948 that there was present at the trial, in the person of counsel, a rational mind which was capable of and responsible for presenting the case for the defense, the District Court in 1948 was not

called upon, and in fact did not attempt, to resolve the question of petitioner's mental capacity to conduct his own defense. Yet it is this last question of mental capacity, and this last question only, which was raised in the District Court in the instant proceeding. Accordingly, since that question of fact has never been considered or resolved either in this or in any prior proceeding, petitioner's present allegation of his lack of mental capacity to conduct his own defense at the 1941 trial must be taken as true on this review.

Conclusion

WHEREFORE, petitioner prays that the judgment of the Court of Appeals for the Fifth Circuit be reversed and the cause remanded to the Federal District Court for a hearing on the question of whether petitioner's mental condition on March 11, 1941, was such that his trial without counsel accorded him due process of law.

DEAN ACHESON,
ROBERTS B. OWEN, JR.,
Union Trust Building,
Washington, D. C.,
Counsel for Petitioner.

COVINGTON & BURLING,
Of Counsel.